



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Justin Starkey  
VMP Tuning, Inc.  
3525 Robert Goddard Avenue  
Deltona, FL 32738

Through:

Mr. Adam M. Kushner  
Hogan Lovells US LLP  
555 Thirteenth Street, NW  
Washington, D.C. 20004

Re: Notice of Violation

Dear Mr. Starkey:

The United States Environmental Protection Agency (EPA) has investigated and continues to investigate VMP Tuning, Inc., (VMP) for compliance with section 203(a) of the Clean Air Act (CAA), 42 U.S.C. § 7522(a), and its implementing regulations. As detailed in this Notice of Violation (NOV), the EPA has determined that VMP sold parts or components for motor vehicles that bypass, defeat, or render inoperative devices or elements of design of those motor vehicles that were installed by the original equipment manufacturer to enable the motor vehicles to comply with CAA emission standards. The EPA also determined that VMP knew, or should have known, that these parts or components were offered for sale or installed for such use or put to such use. Therefore, VMP violated section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B).

*Law Governing Alleged Violations*

EPA administers a certification program to ensure that every vehicle introduced into United States (U.S.) commerce satisfies applicable emission standards. Under this program, EPA issues certificates of conformity (COCs), and thereby approves the introduction of motor vehicles into U.S. commerce. To obtain a COC, a motor vehicle manufacturer must submit a COC application to the EPA for each test group of vehicles that it intends to enter into U.S. commerce. 40 C.F.R. § 86.1844-01.

Motor vehicle manufacturers employ many devices and elements of design to meet emission standards to obtain COCs. *Element of design* means “any control system (*i.e.*, computer software, electronic control system, emission control system, computer logic), and/or control system calibrations, and/or the results of systems interaction, and/or hardware items on a motor vehicle or motor vehicle engine.” 40 C.F.R. § 86.094-2.

The CAA defines a “motor vehicle” as “any self-propelled vehicle designed for transporting persons or property on a street or highway.” Section 216(2) of the CAA, 42 U.S.C. § 7550(1). In addition, the exclusion and exemption of motor vehicles and motor vehicle engines regulations clarifies that

“[f]or the purpose of determining the applicability of section 216(2) of the CAA, a vehicle which is self-propelled and capable of transporting a person or persons or any material or any permanently or temporarily affixed apparatus shall be deemed a motor vehicle, unless any one of more of the criteria set forth below are met, in which case the vehicle shall be deemed not a motor vehicle: (1) The vehicle cannot exceed a maximum speed of 25 miles per hour over level, paved surfaces; or (2) The vehicle lacks features customarily associated with safe and practical street or highway use, ... ; or (3) The vehicle exhibits features which render its use on a street or highway unsafe, impractical, or highly unlikely. ... .” 40 C.F.R. § 85.1703.

The CAA makes it a violation “for any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter, and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.” CAA § 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1854-12(a)(3)(ii). It is also a violation to cause any of the foregoing acts. CAA § 203(a), 42 U.S.C. § 7522(a); 40 C.F.R. § 86-1854-12(a).

The CAA and the applicable regulations also prohibit any person from failing or refusing to make reports or provide information required under section 208 of the CAA, 42 U.S.C. § 7542. CAA § 203(a)(2), 42 U.S.C. § 7522(a)(2); 40 C.F.R. § 86.1854-12(a)(2)(i).

Finally, the CAA provides that persons subject to the requirements of the CAA and the applicable regulations, shall establish and maintain records, and provide information that the EPA may require to determine whether the person has acted, or is acting, in compliance with the CAA and its regulations. CAA § 208(a), 42 U.S.C. § 7542(a).

### *Factual Background*

VMP advertises and offers for sale online certain parts or components for use on motor vehicles that are manufactured by the Ford Motor Company (Ford) that bypass, defeat, or render inoperative a device or element of design that is used to control emissions on the motor vehicle. The parts and components that are the subject matter of this Notice of Violation (NOV) are:

- (1) Tuners and calibration maps that are used to reprogram the electronic control module (ECM)



of gasoline fueled Ford motor vehicles. The ECM is a computer and primary emission control component that acts as the brain of the engine control processes. The ECM collects input signals from multiple sensors, *e.g.*, revolutions per minute, engine temperature, air temperature, throttle position, manifold pressure, and crankshaft position. Based on the input signal and the fuel map(s) and spark timing map(s) programmed into the ECM, the ECM will send output signals to control the timing of the ignition spark, and the amount of fuel injected, which affects the fuel delivery and spark to each cylinder. By altering one or more of these parameters, the devices and software allow the engine to generate more power, but frequently at the loss of increasing criterion pollutant emissions;

- (2) Exhaust pipes that remove or render inoperative the catalytic converter. The catalytic converter is a primary emission control component that is used to reduce toxic byproducts of burning fuel, *e.g.*, nitrogen oxides (NOx), carbon monoxide, and hydrocarbons, to less hazardous byproducts such as dioxide, water vapor, and nitrogen gas; and
- (3) Superchargers that remove or render inoperative the exhaust gas recirculation (EGR) system. The EGR is a primary emission control component that is used to reduce NOx emissions by recirculating the engine's exhaust gas back into the engine.

On August 20, 2015, pursuant to section 208 of the CAA, the EPA issued to VMP an Information Request concerning, among other things, the hardware, software, exhaust systems, and parts and components that VMP offered for sale or sold since January 1, 2014.

VMP responded to the Information Request on October 13, 2015, and November 2, 2015. VMP's responses to the Information Request indicate the following:

1. As described in the enclosed Table 1, between January 1, 2014, and November 2, 2015, VMP sold 1,409 devices that were manufactured by SCT Performance, LLC (the Subject Tuners).
2. VMP advertised and sold the Subject Tuners for use on 1996 to current model year Ford motor vehicles.
3. Each Subject Tuner is a hardware device that attaches to the motor vehicle to reprogram the ECM's original stock calibrations/maps. According to VMP, each Subject Tuner comes preloaded with calibration maps for use on most Ford 1996 to current model year vehicles.
4. As described in the enclosed Table 2, between January 1, 2014, and November 2, 2015, VMP sold for use on Ford motor vehicles 45 exhaust systems that are used to bypass, defeat, or render inoperative the motor vehicle's catalytic converter (the Subject Exhaust Systems).
5. As described in the enclosed Table 3, between January 1, 2015, and November 2, 2015, VMP sold 88 superchargers for use on Ford motor vehicles that bypass, defeat, or render inoperative the motor vehicle's EGR system (the Subject EGR Eliminators).

### *Alleged Defeat Device Violations*

As stated earlier, the Subject Tuners and ECM map calibrations function as a defeat device by bypassing, defeating, or rendering inoperative the motor vehicle's ECM certified design or original fuel and timing map calibrations that controlled emissions. The Subject Exhaust Systems function as a defeat device by bypassing, defeating, or rendering inoperative the motor vehicle's catalytic converter. Finally, the Subject EGR Eliminators function as a defeat device by bypassing, defeating, or rendering inoperative the motor vehicle's EGR system. Due to the function and purpose of the Subject Tuners and ECM map calibrations, the Subject Exhaust Systems, and the Subject EGR Eliminators, as shown by VMP's advertisements, VMP knew, or should have known, that such parts and components were being used on motor vehicles to bypass, defeat, or render inoperative devices or elements of design that control emissions of regulated air pollutants. For example, the User's Manual for the SCT Subject Tuner Part No. 7015 states the following:

- "Before taking your vehicle to the dealer service department for any type of service or warranty work, you should first return the vehicle back to the stock configuration."
- "The stock file is stored during initial programming. The stock file stays on the programmer until returned to stock. You should always return your vehicle back to stock before taking your vehicle in to any auto service facility... ."

For the SCT X4 Tuner, VMP advertises the following:

- "The all new SCT X4 handheld tuning device with VMP Level 1 Custom Tuning is perfect to wake up your normally aspirated Ford car or truck!"
- "Take the hottest new technical achievements in handheld tuning devices, coupled with VMP Custom Tuning that's been dyno and track tested for max performance and you've got power in the palm of your hand!"
- "The X4 Flash device backs up your factory PCM program during installation should you ever need to return your vehicle to the stock program. Restoring your vehicle to the stock PCM program is as easy as selecting 'Return to Stock' from the device menu. With all SCT devices, once returned to stock, there is no footprint or trace of the tune in the vehicle's PCM."
- "Most popular Ford vehicles supported including 2014 models."
- "Stores up to 10 custom tune files created by your local SCT Custom Tuning Dealer."

Based on the foregoing, VMP committed 1,409 violations of section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), by offering for sale and selling the 1,409 Subject Tuners.

Also, VMP knew, or should have known, that the Subject Exhaust Systems were offered for sale, sold, or installed for use on motor vehicles to bypass, defeat, or render inoperative devices or elements of



design that control emissions of regulated air pollutants. The EPA has maintained since the CAA amendments of 1990 that "any pipe used to replace the section of exhaust where the catalytic converter should be, would be considered illegal under the Clean Air Act." EPA's *Exhaust System Repair Guidelines*, March 13, 1991. In addition, the Subject Tuners facilitate the removal of catalytic converters from motor vehicles by disabling the check engine light after such removals. Based on the foregoing, VMP committed 45 violations of section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), by offering for sale and selling the 45 Subject Exhaust Systems.

Finally, VMP knew, or should have known, that the Subject EGR Eliminators were being used on motor vehicles because VMP advertised that the part or component was for use on 2003 and 2004 MY Ford Mustang with 4.6L 4V engines, that the part or component replaced the factory installed supercharger with a larger one, and that the replacement required removal of the EGR valve. Based on the foregoing, VMP committed 88 violations of section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), by offering for sale and selling the Subject EGR Eliminators.

#### *Enforcement Authority*

The EPA may bring an enforcement action for these violations under its administrative authority or by referring this matter to the United States Department of Justice with a recommendation that a civil complaint be filed in federal district court. CAA §§ 204 and 205, 42 U.S.C. §§ 7523 and 7524. Persons violating section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), are subject to an injunction under section 204 of the CAA, 42 U.S.C. § 7523, and a civil penalty of up to \$3,750 for each violation. CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4.

The EPA contact in this matter is Jocelyn L. Adair. You may call Ms. Adair at (202) 564-1011 or contact her by email at [adair.jocelyn@epa.gov](mailto:adair.jocelyn@epa.gov) to request a conference. You should make your request for a conference no later than 10 calendar days after you receive this letter, and we would hold any conference you request within a reasonable time thereafter.

Sincerely,



Phillip A. Brooks, Director  
Air Enforcement Division  
Office of Civil Enforcement

Enclosures: Tables 1, 2, and 3.

**TABLE 1**  
(SUBJECT TUNERS SOLD)

Part Number	Vehicle Application	Part/ Component	Quantity Sold
7015, L1, L2, and L3	1996 – 2015 Ford	SCT X4 Flash Tuner	1,183
3000, B, x3cgt500	1996 – 2015 Ford	SCT X3 Flash Tuner	100
PRP Pro	1996 – 2015 Ford	SCT Pro-racer software	8
13GT500Stage 1	2013 - 2014 Ford Mustang GT500 5.8L 4V	VMP Shelby GT 500 Upgrade Package	63
2015 NASTage 1	2015 Ford Mustang GT	VMP Power Package	2
50LSCTUNE	2011 – 2014 Ford Mustang GT	SCT Tuner	42
REMOTE TUNE	1996 – 2015 Ford	SCT Tuner	2
0304 Cobra Tune	2003 – 2004 Mustang 4.6L 4V	SCT Tuner	4
WSCTUNE	2005-2010 Mustang 4.6L 3V and Ford F150 5.4L 3V	SCT Tuner	2
PowerPakstage2	2011 – 2014 Mustang 5.0L 4V	SCT Tuner	1
Powerpakstage4	2011-2014 Mustang 5.0L 4V	SCT Tuner	2
		<b>Total</b>	<b>1,409</b>

**TABLE 2**  
(SUBJECT CATALYST ELIMINATORS)

Part Number	Vehicle Application	Part/Component	Quantity Sold
LP-162903	2011-2014 Ford Mustang 5.4 – 5.8L 4V	Off-road X Pipe	2
LP-162904	2011-2014 Ford Mustang 5.4 – 5.8L 4V	Off- H Pipe	13
LP-164203	2011-2014 Ford Mustang 5.0L 4V	Off-road X Pipe	3
LP-164204	2011-2014 Ford Mustang 5.1L 4V	Off-road H Pipe	2
LP-2011GT5000RX	2011-2014 Ford Mustang 5.4 – 5.8L 4V	Off-road X Pipe	3
LP-GT5000R	2007-2010 Ford Mustang 5.4L 4V	Off-road Mid Pipe	21
-OX	2005-2014 Ford Mustang 4.6, 5.4L, 58L, 50L	Off-road Mid Pipe	1
		<b>Total</b>	<b>45</b>

**TABLE 3**  
(SUBJECT EGR ELIMINATORS)

Part Number	Manufacturer	Vehicle Application	Part/Component	Quantity Sold
Cobra TVs	Roush Performance	2003 – 2004 Ford Mustang 4.6L 4V	VMP TVS Supercharger Upgrade	88